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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 594.

TAKOMA PARK BANK, INC., *Petitioner*,

v.

LEROY ABBOTT.

BRIEF OF RESPONDENT IN REPLY TO PETITION FOR WRIT OF CERTIORARI.

W. C. SULLIVAN,
Attorney for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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GROUNDS ON WHICH JURISDICTION IS INVOKED.

The Court of Appeals of Maryland in disposing of the questions raised on the present petition said (R. 102-4):

> "The defendant filed two pleas, the first plea being the general issue plea. The second plea was a special plea reciting that plaintiff had no interest, legal or equitable in the fifty $1000.00 gold certificates of the United States of America because he held them in violation of Section 5 (b) of the Act of Congress of October 6, 1917 as amended by Section 2 of the Act of Congress of March 9, 1933, and the Executive Order No. 6260, Section 5 dated August 28, 1933, and is not legally entitled to maintain his action to recover damages, interest, and profits for the alleged loss thereof. To this second plea the plaintiff demurred and the demurrer was sustained.

"Was the court correct in sustaining this demurrer? Section 5 of the Executive Order No. 6260 above referred to provides that after thirty days from August 28, 1933, no person shall hold or retain any interest, legal or equitable, in any gold coin, gold bullion, or gold certificates situated in the United States and owned by any person subject to the jurisdiction of the United States, except under license therefor issued pursuant to this Executive Order. The special plea did not state that the plaintiff did not have a license. 'To constitute a good plea in bar, the matter pleaded, must, if true, afford a full and complete answer to the action and show that there is no right of recovery.' Glenn v. Williams, 60 Md. 93; Carroll v. Bowen, 113 Md. 150 at page 154. Section 3 of the Act of March 9, 1933, supra, also directs that the Secretary of the Treasury shall pay therefor an equivalent amount of any other form of coin or currency issued under the laws of the United States, and although the gold certificates in this case were held after thirty days from August 28, 1933, in order for confiscation to take place, it appears that intent to violate the act must be shown. United States v. 98 $20 United States Gold Coins, et al, No. 342, District Court, E. D. Pennsylvania, August 17, 1937, 20 Fed. Supp. 354. The case of (fol. 120) Schmidt v. Twin City State Bank (April 6, 1940), 151 Kan. 667, 100 P. (2) 653 is cited by the appellant but in that case, at the conclusion of the plaintiff's case, the defendant filed a motion to strike from the record all evidence concerning gold coins. Further, the special plea does not answer the whole declaration because there is no defense set up therein to the loss of $500.00 in currency. Mitchell v. Sellman, 5 Md. 376. Unless the plea expressly states that it is intended only as an answer to a part, it will be taken as extending to the whole, and will necessarily then be held bad on demurrer, unless it presents a good defense to the whole. Poe on Pleading, Tiffany Edition, Sec. 664. We must also note that as above stated, based on the ruling in the case of Security Storage Company v. Martin, supra (144 Md. 536) the relation of bailor and bailee existed and that a bailee cannot dispute the bailor's title. Van Zile, Bailments & Carriers (2nd ed.) 1908 Sec. 20 pp. 17-18. We, therefore, concur with the trial court in sustaining this de-

murrer to the second plea. The demurrer to the second plea having been sustained, the defendant's C. prayer based on the second plea was properly rejected."

It is evident from the foregoing excerpt from the opinion of the Court of Appeals of Maryland that it based its decision so far as the instant petition is concerned upon three federal and three non-federal grounds, any one of which six grounds was sufficient in itself to sustain this judgment, the grounds being:

(a) The defendant did not show that the plaintiff did not have a license under the executive order, (b) the Act of March 9, 1933, directs that the Secretary of the Treasury shall pay for all gold bullion in an equivalent amount in another form of coin or currency, (c) intent to violate the act was not shown, (d) the plea did not afford a full and complete answer to the action and show that there was no right of recovery, (e) no defense was set up as to the $500 in non-gold currency, and (f) a bailee cannot dispute the bailor's title.

It is, of course, elementary that where a State Court acts upon both federal and non-federal grounds either of which is sufficient to sustain its judgment, this Court will not take jurisdiction.

STATEMENT OF FACTS.

LeRoy Abbott, a resident of Washington for thirty-five years and a customer of the Takoma Park Bank from July 6, 1935 (R. 43), rented a safe deposit box from the petitioner on August 17, 1936, and in that box deposited an envelope containing fifty $1,000 gold certificates or gold notes, an ear ring and a diamong ring (R. 20). In addition to the envelope, he placed in the safe deposit box some business papers, ten $100 bills which he received from the Cashier of the petitioner (R. 19). This $1,000 represented the balance of a check of $3,762 remaining after he had deposited $2,762 to his savings account (R. 18-19, 43). Abbott had

sold his business and received on account of the purchase money a check of a Mr. Saylor for $3,762. On the same day he opened a savings account with a deposit of $200 for the purpose of enabling James N. Payne, his employee, to deposit the proceeds of unpaid accounts when and as collected (R. 18).

Abbott stated that the reason he did not deposit the gold certificate was because of trouble he had with his wife and he was afraid she would find out that he had this money. He further stated that he did not know at that time that the bills or gold certificates should be turned in to the Treasury and exchanged (R. 39-40).

He went to the safe deposit door and after ringing the bell and being admitted by the woman attendant, he rented a safe deposit box for three years stating he was leaving Washington and did not know when he would return (R. 19). He signed a contract of rental for the safe deposit box which provided that no one other than the renter should have access to the box (R. 36). After receiving his receipt, the attendant walked around to the safe deposit box door in the vault room and said this is your number and she put the box in the locker and gave the key a turn and then handed to the respondent the key to the box and let him out of the vault (R. 19). Upon his return to Washington he went to the box and took out a note given to him by the purchaser of his business and everything in his box was intact (R. 19). He did not take any money out of the box until May, 1937. He was not able to give the exact amounts and dates but took out $100, or whatever amount he needed at the particular time, and on November 30, 1937, he took out $200 and counted the bills remaining and there was $500 left (R. 19). The envelope containing the fifty $1,000 gold notes, the ear ring and the diamond ring was made out of brown heavy manila paper "and instead of opening up like a regular envelope would it had two little seals you take a piece of cord and run around this way (indicating) to seal it up. Then over top of that was a piece

of sealing wax to seal the cord' (R. 20). He never took any of the fifty $1,000 bills out of the envelope and the envelope was intact and the seal had not been broken when he examined his box on November 30, 1937 (R. 20). After examining his box, the black box was put back in the depositary, and it locked when the respondent took the key out (R. 21). He left the vault when the attendant released the lock on the gate or grill (R. 21). "There is always an attendant in charge of the door" (R. 21).

He further stated that on December 13, 1937, he went to the Morris Plan Bank and saw Mr. Collegeman and asked him if he could dispose of one of the $1,000 gold certificates. He was asked how many of these certificates he had and when he told him he had fifty he was advised to get counsel. Pursuant to that advice, he called Henry F. Woodard, an attorney, that afternoon and was advised to go to the bank on the morning of the 14th to get the box and take it to him and he, Woodard, would take them to the Treasury and explain why they had not been turned in (R. 40).

The respondent next went to the Bank on December 14, 1937. He went to the door, rang the bell and, while he signed the register, the lady took his key and opened the compartment and the box and its contents were gone (R. 21).

The attendant called an officer of the Bank who inquired what was in the box and why the respondent had come so early in the morning. The respondent told the bank officer that "he had seen counsel the night before and that he would like to get in touch with his counsel and see what he says to tell you" (R. 21). Mr. Henry F. Woodard was called by telephone, and he told Abbott to give the Bank a full list of the contents of the box, which he did (R. 21-2).

The respondent, with his counsel Mr. Woodard, went to the Bank the next morning (R. 15, 22) and talked with Mr. Gates, an officer of the Bank, who stated "Well, either Mr. Abbott took the box away, or else it got put in the wrong slot" (R. 17) and a higher official of the Bank told Mr.

Woodard, in the presence of the respondent, that "the Bank was insured and we could sue" (R. 17).

On cross-examination, the respondent testified he got the fifty $1,000 gold certificates from his aunt, Caroline Points, in the fall of the year 1925 or 1926 (R. 24). On re-direct examination the respondent testified that he showed the money to James Payne about two weeks before he finally closed out his business (R. 26), and James Payne testified that in July, 1936, Abbott showed him an envelope with fifty $1,000 gold notes in it, and the bills were counted (R. 26).

Victor Fortwengler, a witness for the respondent, testified that he accompanied Abbott to the Bank on November 30, 1937, and that when Abbott returned to his automobile the witness did not see him have a box or anything with him. They returned to Abbott's apartment and the witness did not see Abbott take any box out of the car (R. 27).

The petitioner produced Hazel Funkhouser, an employee, who testified that she rented the safe deposit box to Abbott on August 17, 1936, had him sign the card and issued to him the keys. She knew Abbott as a customer of the Bank and was familiar with his signature (R. 28-9). She further testified that she got the key number 648 from one of the safe deposit boxes in the vault where the keys are kept that are not in use, and in order to get in the safe deposit box it is necessary to use both a guard key and the key to the box. The guard key was kept by Mrs. Adler who had charge of the safe deposit boxes in her cage back of the grille, and the key to the box where the unused keys are placed was kept in a money drawer in Mrs. Adler's cage and sometimes hangs right beside her and is available to all employees of the bank. She admitted him to the vault on November 30, 1937 (R. 31-2).

Helen Adler admitted the appellee to the vault on December 14, 1937 (R. 32). She testified that on December 14, 1937 "he came in and pressed the buzzer by the side of the door and then I released the lock from my desk and took

the master keys and went to the vault and he was right along with me. I inserted the master key and then took it out and put his key in and turned it all the way back * * * After I opened the lock I looked and the box wasn't there. I run my arm back in the box and I said 'Well, your box isn't there.' He said, 'That is funny' " (R. 32-3).

The guard keys were kept on her desk (R. 41, 42) and another set were kept in her drawer (R. 33-4) and the key to the tray containing unused customers' box keys is likewise kept in her desk (R. 34). All of these keys are "available to all the employees of the Bank" (R. 31).

Harold F. Gates, the Assistant Cashier, testified his first contact with Abbott was on December 14, 1937, when Mrs. Adler brought the respondent to his desk, (R. 41) stating "that when she opened the compartment in which his box—in which his key was—that there was no box in the compartment and he wanted to consult with an officer of the Bank about that" (R. 41).

A demand was made upon the Bank and ignored and suit was brought.

The Pleadings.

The suit was brought in Montgomery County by the filing of a declaration on September 19, 1938, (R. 1) and the particulars of the plaintiff's claim were supplied October 11, 1938 (R. 1) pursuant to a demand made September 30, 1938 (R. 1).

On October 19, 1938, a petition for removal to the District Court of the United States for the District of Maryland was filed, (R. 1) and on November 12, 1938, a stipulation suspending and staying proceedings was filed (R. 1).

The defendant's pleas were filed on December 14, 1938, (R. 1) and the introduction to them reads as follows (R. 8):

"The defendant, The Takoma Park Bank, Inc., a body corporate, sued herein under the designation 'The Takoma Park Bank, a corporation, Inc.,' by William D. Macmillan, Leonard J. Ganse, and William V. Bouic, its Attorneys, for

pleas to the Declaration as enlarged and limited by the plaintiff's Bill of Particulars filed thereto, says:

This introduction was followed by two pleas. The first plea was the general issue (R. 8). The second plea was a special plea setting forth that the "plaintiff had no interest, legal or equitable" in the 50 $1000 gold certificates because he held them in violation of sec. 5 (b) of the Act of Congress of October 6, 1917, as amended by sec. 2 of the Act of March 9, 1933, and the Executive Order No. 6260, sec. 5, and is not legally entitled to maintain his action (R. 8-10). To this second plea the plaintiff demurred and the demurrer was sustained (R. 13).

ARGUMENT.

The State Court of Appeals decided the question raised by the petition upon six grounds, three federal and three non-federal (*supra* p. 3). It is submitted that the federal grounds were correctly decided:

(a) Because the petitioner did not show that the respondent did not have a license under the Executive Order.

(b) Because no intention to violate the act was shown.

(c) Because Congress definitely described and prescribed the result of failure to comply with the statute by turning in the gold certificates. Congress gave no power to the President to pass Executive Orders as to the consequences of violation of the Act but it prescribed such consequences itself in the form of fine and imprisonment. It did not prescribe a forfeiture of property but instead by Section 3 of the Act required that the Secretary of the Treasury pay for all gold turned in to him in an equivalent amount and in some other form of coin or currency. Nor did the Executive Order go beyond the imposition of the statutory penalty.

The petitioner's case is rested by it entirely upon the proposition that respondent had no property right in the gold certificates either legally or equitably which a court

may recognize consistent with the Executive Order No. 6260. However, as pointed out by the Court of Appeals of Maryland in its opinion (R. 103) "Section 3 of the Act of March 9, 1933, *supra*, also directs that the Secretary of the Treasury shall pay therefor an equivalent amount of any other form of coin or currency issued under the laws of the United States."

Neither the statute nor the Executive Order confiscated or attempted to confiscate gold certificates. Any holder of any gold certificate retained his rights in the certificate for sec. 248 of Title 12 of U. S. C. A. par. "N" deals directly with this subject and authorizes the Secretary of the Treasury to call in for delivery "any or all gold coin and gold bullion and gold certificates" and specifically provides that "Upon receipt of such gold coin, gold bullion and gold certificates, the Secretary of the Treasury shall pay therefor an equivalent amount of any other form of coin or bullion mined or issued under the laws of the United States."

It is also submitted that the non-federal grounds were correctly decided:

(a) Because a plea must answer the whole of the declaration. It must be conceded that the plea did not answer the whole of the declaration, because it was silent concerning the $500 in currency.

> "With reference to pleas in bar generally, the rule is that in order to operate as a complete bar to the action they should be a substantial and conclusive answer, and should, moreover, answer the whole of what is alleged in the declaration, and be good in every part, and that when they assume to answer the whole and only answer a part, they will be bad altogether. * * * But when a plea is only intended for part of the declaration it must not cover the whole but must ascertain the part to which it is applied, for, *unless it expressly states that it is intended only as an answer to a part* it will be taken as extending to the whole and will necessarily then be held bad on demurrer, unless it presents a good defense to the whole." (Italics ours)

Poe's Pleading & Practice, Vol. 1, Sec. 664, Tiffany's Ed.

The pleas here were two in number, one of general issue and the other a bad special plea, both preceded by the same introduction. One could not be a plea to the whole and the other to but a part (*supra* p. 8).

(b) No defense was set up at the trial as to the $500 in gold currency.

(c) A bailee cannot dispute the bailor's title.

But whether the non-federal grounds were correctly or incorrectly decided was beside the point. They are sufficient to sustain the judgment of the State Court of Appeals and whether it erred or not in deciding them this Court will not consider.

It is the settled rule that where the judgment of a State Court rests on two grounds, one involving a federal question and the other not, and the ground independent of the federal question is sufficient in itself to sustain the judgment of the State Court, this Court will not take jurisdiction; and this rule applies both in cases of appeals from State Courts (*Honeyman* v. *Hannon*, 300 U. S. 14; *Lynch et al.* v. *People of New York*, 293 U. S. 52) and to petitions for writs of certiorari (*Ward* v. *Love County*, 253 U. S. 17, 22-3; *Broad River Power Co.* v. *South Carolina*, 281 U. S. 537, 540-1).

The petition should be denied.

Respectfully submitted,

W. C. Sullivan,
Attorney for Respondent.